

### 3.101-2

conduct must, in addition, be such that they would have no reluctance to make a full public disclosure of their actions.

#### **3.101-2 Solicitation and acceptance of gratuities by Government personnel.**

As a rule, no Government employee may solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who (a) has or is seeking to obtain Government business with the employee's agency, (b) conducts activities that are regulated by the employee's agency, or (c) has interests that may be substantially affected by the performance or non-performance of the employee's official duties. Certain limited exceptions are authorized in agency regulations.

#### **3.101-3 Agency regulations.**

(a) Agencies are required by Executive Order 11222 of May 8, 1965, and 5 CFR part 735 to prescribe *Standards of Conduct*. These agency standards contain—

(1) Agency-authorized exceptions to 3.101-2; and

(2) Disciplinary measures for persons violating the standards of conduct.

(b) Requirements for employee financial disclosure and restrictions on private employment for former Government employees are in Office of Personnel Management and agency regulations implementing Public Law 95-521, which amended 18 U.S.C. 207.

#### **3.102 [Reserved]**

#### **3.103 Independent pricing.**

##### **3.103-1 Solicitation provision.**

The contracting officer shall insert the provision at 52.203-2, Certificate of Independent Price Determination, in solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

(a) The acquisition is to be made under the simplified acquisition procedures in part 13;

(b) [Reserved]

(c) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or

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(d) The solicitation is for utility services for which rates are set by law or regulation.

[48 FR 42108, Sept. 19, 1983, as amended at 50 FR 1727, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 55 FR 25526, June 21, 1990; 60 FR 34744, July 3, 1995]

#### **3.103-2 Evaluating the certification.**

(a) *Evaluation guidelines.* (1) None of the following, in and of itself, constitutes *disclosure* as it is used in subparagraph (a)(2) of the Certificate of Independent Price Determination (hereafter, the certificate):

(i) The fact that a firm has published price lists, rates, or tariffs covering items being acquired by the Government.

(ii) The fact that a firm has informed prospective customers of proposed or pending publication of new or revised price lists for items being acquired by the Government.

(iii) The fact that a firm has sold the same items to commercial customers at the same prices being offered to the Government.

(2) For the purpose of subparagraph (b)(2) of the certificate, an individual may use a blanket authorization to act as an agent for the person(s) responsible for determining the offered prices if—

(i) The proposed contract to which the certificate applies is clearly within the scope of the authorization; and

(ii) The person giving the authorization is the person within the offeror's organization who is responsible for determining the prices being offered at the time the certification is made in the particular offer.

(3) If an offer is submitted jointly by two or more concerns, the certification provided by the representative of each concern applies only to the activities of that concern.

(b) *Rejection of offers suspected of being collusive.* (1) If the offeror deleted or modified subparagraph (a)(1) or (a)(3) or paragraph (b) of the certificate, the contracting officer shall reject the offeror's bid or proposal.

(2) If the offeror deleted or modified subparagraph (a)(2) of the certificate, the offeror must have furnished with its offer a signed statement of the circumstances of the disclosure of prices